

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CIV 12-1056 MCA/KBM
CR 07-0748 MCA

TRAVIS LOREN DALLY,

Defendant-Movant.

ORDER DENYING DISCOVERY, APPOINTMENT OF COUNSEL
&
EVIDENTIARY HEARING

THIS MATTER is before the Court on Defendant's motions seeking copies of certain materials, an evidentiary hearing and subpoena for a witness he wants to question, and appointment of counsel. *See Docs. 4, 10, 11*. A defendant who seeks habeas relief have no constitutional right to counsel, and the decision whether the appoint counsel is left the court's discretion. Ordinarily, there is no reason to appoint counsel unless the case has reached the stage of the proceedings where an evidentiary hearing is required. *See e.g., United States v. Moya-Breton*, 439 F. App'x 711, 716 (10th Cir. 2011) (citing *Engberg v. Wyoming*, 265 F.3d

1109, 1122 & n. 10 (10th Cir. 2001) and Rule 8(c), RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS), *cert. denied*, 132 S.Ct. 1775 (2012). The Rules do not call for expansion of the record or an evidentiary hearing until after this Court has conducted a review of the claims in light of the record and the United States' answer, which is now due in early February. *See id.* at 715-16. Accordingly, Defendant's requests are premature.

Wherefore,

IT IS HEREBY ORDERED that Defendant's pending motions (*Docs. 4, 10 and 11*) are **denied without prejudice**.



UNITED STATES CHIEF MAGISTRATE JUDGE